

MONTANA LEGISLATIVE HISTORY

Chapter 491 19 75

Bill H 396 S _____ Original bill & history ☒ C

H. Committee on Judiciary

Hearing Date(s) 2/11 ☒ C

2-15 ☒ C

_____ C

_____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) 3/8 ☒ C

_____ C

_____ C

_____ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

House BILL NO. *396*

INTRODUCED BY

Walter H. Harnischman Duane Holmes
Richard E. Harnischman Duane Holmes

A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPLEMENT ARTICLE II, SECTION 3 OF THE 1972 CONSTITUTION BY PROVIDING GUIDELINES FOR CITIZEN PARTICIPATION IN THE OPERATIONS OF GOVERNMENT AGENCIES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Legislative intent. The legislature finds and declares pursuant to the mandate of Article II, section 3, of the 1972 Montana Constitution that legislative guidelines should be established to secure to the people of Montana their constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency.

Section 2. Definitions. As used in this act:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules except:

(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt

because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings as to the applicability of any statutory provision or of any rule;

(c) intra-agency memoranda.

Section 3. Agency requirements. (1) Before an agency makes a decision adopting a rule or policy, awarding a contract, granting or denying a permit, license, except where the issuance of such permits or licenses involves no more than a ministerial act, change of rate or otherwise deciding an issue of significant interest to the public, the agency shall provide for, encourage, and assist public participation to the fullest extent practicable which shall

INTRODUCED BILL

-2- HB 396

1 include, but not be limited to:

2 (a) reasonable notice of its intended action;

3 (b) a method of affording interested persons
4 reasonable opportunity to submit data, views or arguments,
5 orally or in writing prior to the final decision of the
6 agency.

7 (2) Each agency shall adopt guidelines for its
8 programs, which guidelines shall provide policies and
9 procedures to facilitate public participation in those
10 programs, consistent with subsection (1) of this section.
11 These guidelines shall be adopted as rules and published in
12 a manner which may be provided to a member of the public
13 upon request.

14 Section 4. Enforcement. No agency decision is valid
15 or effective against any person or party whose rights have
16 been prejudiced by an agency's failure to comply with this
17 act. The district courts of the state have jurisdiction to
18 set aside an agency decision under this act upon petition of
19 the aggrieved party made within ninety (90) days of the date
20 of the decision.

-End-

1975
house

JUDICIARY

COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 396	To implement article II, section 8 of the 1972 Constitution by providing guidelines for citizen participation in the operations of government agencies.	1/28/75	Meloy	2/11/75	DO PASS	2/15/75
HB 397	To amend by extending from 45 days to 75 days the allowable period for applying for an absentee ballot.	1/28/75	Stoltz	2/13/75	DO PASS	2/15/75
HB 402	An act to amend to include in the definition of official misconduct the act of inducing a person to commit a criminal act, and to amend section 94-3-111, etc.	1/28/75	Sloan	2/13/75	DO NOT PASS	2/15/75
HB 406	An act protecting the right of the people to access to a full discussion of all sides of political issues involved in an election context by prohibiting the raising, etc.	1/28/75	Bardanoue	2/13/75	DO NOT PASS	2/21/75
HB 407	Providing for the appointment, duties, & powers of a code commissioner to recompile the laws of Mt., repealing section 12-332.1, R.C.M. 1947.	1/28/75	Bardanoue	2/7/75	2/7-tabled	
	Creating the office of Mt. ombudsman to provide repre-	1/28/75	Wright			

Representative Meloy, in answer to comment by Representative Day about including county commissioners to help set salaries, stated that the district judge has to keep on pretty good terms with the county commissioners and as a practical matter most judges confer on salaries with the county commissioners.

The hearing was then closed on House Bill No. 354.

HOUSE BILL NO. 396 Representative Mike Meloy, District #29, chief sponsor of this measure to implement the new Constitution by providing guidelines for citizens participation in the operations of government agencies, stated this bill is the same bill that passed the House and died in the Senate along with two other bills designed to implement the Constitution. The two other bills dealt with the right to know in relation to public bodies and documents. This one caused the least opposition; the other bills have not been reintroduced. This bill intends to involve citizens in the decision-making process, and is designed to pick up where the Administrative Procedures Act leaves off. It requires an agency to give guidelines, policy and procedure to grant citizen participation.

There were no other proponents. Opponent, L. P. McDonald, representing the Anaconda Company, stated that they have a different concept of the constitutional provision. They have no argument against public participation if it is reasonable. He feels if state government has to have public hearings all the time, it will really put shackles on it. He questioned whether the Highway Department would have to give public notice to send out snow removal equipment. No other opponents testified.

Representative Meloy, in closing, stated that the language of the Constitutional Convention very clearly intends that the Legislature provide for implementation of this provision. He apologized that this bill is not more specific than it is but being more specific would entail a very lengthy bill. The language permits the agencies to make decisions and provide citizen participation. He feels that if participation of the people results in great shackles to the government, then, so be it. He invited the committee to consider the fact that Anaconda would come in and oppose a bill designed to encourage public participation.

Representative Yardley, in questioning Mr. McDonald, was told that the bill is so broad, it could hamper any action. Representative Halvorson questioned if there was anything in the bill that would prevent coffee klatch decisions; to which Representative Meloy answered that there isn't any way to end this type of decision making. In answer to Representative Moore, Representative Meloy explained that where the Administration Procedures Act covers a situation, it fully applies; where it doesn't, this would complement and supplement the act.

Following a brief discussion, the hearing was closed.

EXECUTIVE SESSION

HOUSE BILL NO. 354 A motion by Representative Moore of DO PASS AS AMENDED was withdrawn and he then moved to adopt the amendment as proposed which was, following "\$12,500" insert "said salary to be set by the judge in the district in which the reporter works". A substitute motion by Representative Day to add to the above amendment the phrase "with the approval of the county commissioners" failed on a roll call vote of eight to six with Representatives Anderson, Baeth, Day, Hager, Halvorson and Rasmussen voting yes, Representatives Scully and Seifert absent. Staff attorney Diana Dowling explained that the reasoning in judges setting the salary would be that whatever the judge sets the salary at has to go in the budget.

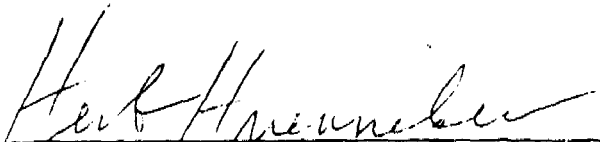
Representative Meloy stated that we are in fact, by adopting this bill, giving some discretion back to the county above the figure stated in the bill. The existing statute dictates salary shall be set at \$12,500. If you vote against this bill you are opposing the Legislature's statute. The court reporter may not have to have any special formal educational background but in order to be proficient it takes a great deal of training. Skills are as compensable as formal education.

Representative Yardley stated he would like to find out if the judges want this responsibility of setting salaries.

A motion by Representative Hager to amend by striking numerical figure and phrase in line 14 of "not less than \$12,500" and also strike "minimum" in the title was discussed. Time ran out and a quorum of the committee had to leave.

Time having run out, the meeting was adjourned at 10:40 AM.

HH:pb


HERB HUENNEKENS, CHAIRMAN

JUDICIARY COMMITTEE

February 15, 1975

EXECUTIVE SESSION

The thirty second meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Saturday, February 15, 1975 on adjournment of the House which was approximately 4:00 PM. Representative Herb Huennekens Chairman, presided. All members were present except Representatives Moore, Kimble, Seifert and Yardley, absent, excused.

HOUSE BILL NO. 402 Chairman Huennekens explained that this morning the committee had voted to strike section two of this bill.

Representative Rasmussen moved DO NOT PASS. Motion carried with Representatives Baeth, Lester, Vincent and Meloy voting n

HOUSE BILL NO. 397 Representative Meloy moved DO PASS. Representative Anderson stated he feels this problem isn't legitimate and Representative Hager stated he can't see the problem either. Representative Meloy stated this just makes it more convenient for someone to vote.

Motion DO PASS carried with Representative Halvorson abstaining. Representatives Rasmussen, Hager, Anderson and someone else voted no.

HOUSE BILL NO. 375 Representative Meloy moved DO PASS. In answer to question he read section 25-304 which pertains to miscellaneous fees. By removing this section they are eliminating some fee requirements that were going directly to the justices of the peace.

Motion DO PASS carried unanimously.

HOUSE BILL NO. 396 Representative Baeth moved DO PASS. Representative Meloy stated this bill was amended in the Constitution and federal elections committee and on the floor in the last session.

Motion DO PASS carried unanimously.

HOUSE BILL NO. 367 Representative Day stated he was never able to get the information he wanted regarding the extent of salt contamination in the northeast part of the state. He thinks it is quite extensive.

Representative Meloy moved to amend page 1, line 22 by striking "operations under an" and inserting "seismic exploration for building, designing, producing or other operations"

STANDING COMMITTEE REPORT

February 15, 1975

MR. SPEAKER:

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 396

A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPLEMENT ARTICLE II, SECTION 8 OF THE 1972 CONSTITUTION BY PROVIDING GUIDELINES FOR CITIZEN PARTICIPATION IN THE OPERATIONS OF GOVERNMENT AGENCIES."

Respectfully report as follows: That HOUSE Bill No. 396

DO PASS

HH:pb

1975
Senate

44th

LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
367	2/22/75	3/10/75	3/20/75					3/19/75	
372	2/25/75	3/11/75	3/19/75				3/18/75		
375	2/20/75	3/8/75	3/10/75				3/8/75		
383	2/15/75	3/8/75	3/10/75				3/8/75		
393	2/19/75	3/8/75	3/14/75				3/13/75		
395	3/4/75	3/15/75	3/19/75					3/18/75	
396	2/20/75	3/8/75	3/11/75					3/8/75	
397	2/20/75	3/8/75	3/11/75				3/8/75		
412	2/21/75	3/18/75	3/19/75					3/18/75	
419	2/19/75	3/10/75	3/11/75					3/10/75	
420	2/19/75	3/10/75	3/19/75					3/18/75	
455	2/28/75	3/12/75	3/13/75					3/12/75	
463	2/22/75	3/10/75	3/13/75					3/12/75	
468	2/19/75	3/10/75	3/13/75						3/12/75
471	2/20/75	3/13/75	3/14/75					3/13/75	
474	2/19/75	3/4/75	3/5/75					3/5/75	
496	2/27/75	3/14/75	3/20/75					3/19/75	

There were no further proponents and no opponents to the bill.

Senator Towe left to present a bill before another committee and Senator Greely took the chair.

HB 345 -- HB 345, sponsored by Representative Mike Meloy of District 29, was heard next. He stated that the intent of the bill was to allow cities to recodify their ordinances according to a numerical decimal system.

Mr. Dan Mizner, Executive Director of the Montana League of Cities and Towns, expressed support for the bill.

There were no further proponents and no opponents to the bill.

HB 383 -- HB 383, also sponsored by Representative Meloy, was heard next. He stated that the bill requires the Public Service Commission to hold hearings on changes in schedules when there are adverse parties, and requires it to render decisions in accordance with provisions of the Administrative Procedure Act.

There were no further proponents and no opponents to the bill.

HB 396 -- HB 396, also sponsored by Representative Meloy, was heard next. He stated that the purpose of the bill, which was sponsored a year ago by Representative Greely, was to give citizens the right to participate in the operations of State agencies. He stated that the bill mandates all agencies to adopt regulations to facilitate public participation.

There were no further proponents and no opponents to the bill.

HB 397 -- HB 397, sponsored by Representative Gail Stoltz of District 14, was heard next. She stated that the bill was written to extend the period for applying for absentee ballots from 45 to 75 days. She stated that the bill was requested by her constituents, some of whom are students studying far from home who need the extra time to send absentee ballots.

There were no further proponents and no opponents to the bill.

HB 375 -- HB 375, sponsored by Representative Steven Helmbrecht

There were no further proponents and no opponents to the bill.

There being no more bills to be heard, the committee went into executive session.

EXECUTIVE SESSION

HB 375 -- Senator Turnage moved that HB 375 be concurred in. WITH SENATOR TOWE EXCUSED, THE MOTION CARRIED ON A ROLL CALL VOTE.

HB 397 -- Senator Turnage moved that HB 397 be concurred in. WITH SENATOR TOWE EXCUSED, THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 345 -- Senator Drake moved that HB 345 be concurred in. WITH SENATOR TOWE EXCUSED, THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 383 -- Senator Warden moved that HB 383 be concurred in. WITH SENATOR TOWE EXCUSED, THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 396 -- Senator Turnage moved to amend HB 396 on page 2, section 3, lines 18 through 24. WITH SENATOR TOWE EXCUSED, THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Greely moved that HB 396 be concurred in as amended. WITH SENATOR TOWE EXCUSED, THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

HB 393 -- Senator Turnage moved that the deleted material on page 8, lines 19 through 22 of HB 393 be reinstated and the new material stricken. WITH SENATORS TOWE AND CETRONE EXCUSED, THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Turnage moved to amend HB 393 on page 11, line 24 by inserting a new sentence. WITH SENATORS TOWE AND CETRONE EXCUSED, THE MOTION CARRIED UNANIMOUSLY ON A ROLL CALL VOTE.

Senator Turnage moved to pass consideration of HB 393 for the day. WITH SENATORS TOWE AND CETRONE EXCUSED AND SENATOR ROBERTS VOTING NO, THE MOTION CARRIED ON A ROLL CALL VOTE.

There being no further business, the committee adjourned until 9:30 A.M., March 10, 1975.

Date 3/8/75 House Bill No. 326 Title _____

NAME	YES	NO
THOMAS E. TOWE		
JOE R. ROBERTS	X	
V. E. CETRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE	X	
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

John Robinson
Secretary

Thomas G. Davis, Jr.
Chairman

Motion: by Senator Turnage to amend page 2,
section 3, lines 18 - 24.

DATE 3/8/75

House Bill No. 396

Page

NAME	YES	NO
THOMAS E. TOWE		
JOE R. ROBERTS	X	
V. E. CEFTRONE	X	
MARGARET S. WARDEN	X	
ROBERT J. BROWN	X	
GLEN L. DRAKE	X	
JEAN A. TURNAGE	X	
MICHAEL GREELY	X	

Jill Robinson
Secretary

Thomas E. Towe
Chairman

Motion: by Senator Greely that HB 396 be
concurred in as amended.

March 10

19 75

MR. **PRESIDENT**

We, your committee on **JUDICIARY**

having had under consideration **HOUSE** Bill No. **396**

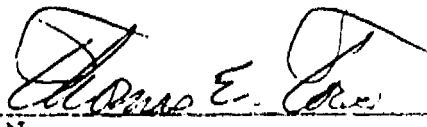
Respectfully report as follows: That **HOUSE** Bill No. **396**,

third reading, be amended as follows:

1. Amend page 2, section 3, line 18.
Following: "(1)"
Strike: "Before an"
Insert: "Except where the issuance of a permit or license involves no more than a ministerial act, the"
2. Amend page 2, section 3, line 19.
Following: line 18
Strike: "makes"
Insert: "before making"
3. Amend page 2, section 3, lines 20 through 21 and line 22.
Following: "license,"
Strike: "except where the issuance of such permits or licenses involves no more than a ministerial act,"

4. Amend page 2, section 3, line 23.
Following: "public?"
Strike: "the"
5. Amend page 2, section 3, line 24.
Following: line 23
Strike: "agency"

AND AS SO AMENDED, BE CONCURRED IN



CHAIRMAN

HOUSE BILL NO. 396

INTRODUCED BY MELOY, HUENNEKENS, DRISCOLL, HOLMES, RICHARDS,
LYNCH, YARDLEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPLEMENT ARTICLE
II, SECTION 8 OF THE 1972 CONSTITUTION BY PROVIDING
GUIDELINES FOR CITIZEN PARTICIPATION IN THE OPERATIONS OF
GOVERNMENT AGENCIES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered
82-4226 that reads as follows:

82-4226. Legislative intent. The legislature finds
and declares pursuant to the mandate of Article II, section
8, of the 1972 Montana constitution that legislative
guidelines should be established to secure to the people of
Montana their constitutional right to be afforded reasonable
opportunity to participate in the operation of governmental
agencies prior to the final decision of the agency.

Section 2. There is a new R.C.M. section numbered
82-4227 that reads as follows:

82-4227. Definitions. As used in this act:

(1) "Agency" means any board, bureau, commission,
department, authority, or officer of the state or local
government authorized by law to make rules except:

(a) the legislature and any branch, committee, or
officer thereof;

(b) the judicial branches and any committee or officer
thereof;

(c) the governor, except that an agency is not exempt
because the governor has been designated as a member
thereof; or

(d) the state military establishment and agencies
concerned with civil defense and recovery from hostile
attack.

(2) "Rule" means any agency regulation, standard, or
statement of general applicability that implements,
interprets, or prescribes law or policy or describes the
organization, procedures, or practice requirements of any
agency. The term includes the amendment or repeal of a
prior rule, but does not include:

(a) statements concerning only the internal management
of an agency and not affecting private rights or procedures
available to the public;

(b) declaratory rulings as to the applicability of any
statutory provision or of any rule;

(c) intra-agency memoranda.

Section 3. There is a new R.C.M. section numbered
82-4228 that reads as follows:

82-4228. Agency requirements. (1) Before--an ~~EXCEPT~~

~~WHERE THE ISSUANCE OF A PERMIT OR LICENSE INVOLVES NO MORE THAN A MINISTERIAL ACT, THE~~ agency makes BEFORE MAKING a decision adopting a rule or policy, awarding a contract, granting or denying a permit, license, except where the issuance of such permits or licenses involves no more than a ministerial act, change of rate or otherwise deciding an issue of significant interest to the public, the agency shall provide for, encourage, and assist public participation to the fullest extent practicable which shall include, but not be limited to:

(a) reasonable notice of its intended action;

(b) a method of affording interested persons reasonable opportunity to submit data, views or arguments, orally or in writing prior to the final decision of the agency. EACH AGENCY SHALL DEVELOP PROCEDURES FOR PERMITTING AND ENCOURAGING THE PUBLIC TO PARTICIPATE IN AGENCY DECISIONS THAT ARE OF SIGNIFICANT INTEREST TO THE PUBLIC. THE PROCEDURES SHALL ASSURE ADEQUATE NOTICE AND ASSIST PUBLIC PARTICIPATION BEFORE A FINAL DECISION IS MADE ON THE ADOPTION OF A RULE OR POLICY, AWARDED A CONTRACT, GRANTING OR DENYING A PERMIT, LICENSE OR CHANGE OF RATE THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC.

(2) AN AGENCY SHALL BE DEEMED TO HAVE COMPLIED WITH THE NOTICE PROVISIONS OF THIS ACT IF:

(A) AN ENVIRONMENTAL IMPACT STATEMENT IS PREPARED AND

DISTRIBUTED AS REQUIRED BY THE MONTANA ENVIRONMENTAL POLICY ACT, TITLE 69, CHAPTER 65;

(B) A PROCEEDING IS HELD AS REQUIRED BY THE MONTANA ADMINISTRATIVE PROCEDURE ACT, TITLE 82, CHAPTER 42;

(C) A PUBLIC HEARING, AFTER APPROPRIATE NOTICE IS GIVEN, IS HELD PURSUANT TO ANY OTHER PROVISION OF STATE LAW OR A LOCAL ORDINANCE OR RESOLUTION; OR

(D) A NEWSPAPER OF GENERAL CIRCULATION WITHIN THE AREA TO BE AFFECTED BY A DECISION OF SIGNIFICANT INTEREST TO THE PUBLIC HAS CARRIED A NEWS STORY OR ADVERTISEMENT CONCERNING THE DECISION PRIOR TO A FINAL DECISION ON A MATTER.

(3) PROCEDURES FOR ASSISTING PUBLIC PARTICIPATION SHALL INCLUDE A METHOD OF AFFORDING INTERESTED PERSONS REASONABLE OPPORTUNITY TO SUBMIT DATA, VIEWS OR ARGUMENTS, ORALLY OR IN WRITTEN FORM, PRIOR TO MAKING A FINAL DECISION THAT IS OF SIGNIFICANT INTEREST TO THE PUBLIC.

(4) THE PROVISIONS OF THIS ACT DO NOT APPLY TO:

(A) AN AGENCY DECISION THAT MUST BE MADE TO DEAL WITH AN EMERGENCY SITUATION AFFECTING THE PUBLIC HEALTH, WELFARE OR SAFETY;

(B) AN AGENCY DECISION THAT MUST BE MADE TO MAINTAIN OR PROTECT THE INTERESTS OF THE AGENCY, INCLUDING BUT NOT LIMITED TO THE FILING OF A LAWSUIT IN A COURT OF LAW OR BECOMING A PARTY TO AN ADMINISTRATIVE PROCEEDING; OR

(C) A DECISION INVOLVING NO MORE THAN A MINISTERIAL

1 ACT.

2 ~~†2†~~(5) Each agency shall adopt guidelines for its
3 programs, which guidelines shall provide policies and
4 procedures to facilitate public participation in those
5 programs, consistent with subsection (1) of this section.
6 These guidelines shall be adopted as rules and published in
7 a manner which may be provided to a member of the public
8 upon request.

9 Section 4. There is a new R.C.M. section numbered
10 82-4229 that reads as follows:

11 82-4229. Enforcement. ~~No-agency-decision-is-void-or~~
12 ~~effective-against-any-person-or-party-whose-rights-have-been~~
13 ~~prejudiced-by-an-agency's-failure-to-comply-with--this--act.~~

14 The district courts of the state have jurisdiction to set
15 aside an agency decision under this act upon petition of the
16 ~~aggrieved-party~~ ANY PERSON WHOSE RIGHTS HAVE BEEN PREJUDICED
17 made within ~~ninety-†90†~~ THIRTY (30) days of the date of the
18 decision.

-End-